STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 5, 2004
v	No. 249853 Cheboygan Circuit Court
JOHN LAVELL WILLIAMS, Defendant-Appellant.	LC No. 03-002709-FH

Before: Bandstra, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to deliver between fifty and 224 grams of cocaine, MCL 333.7401(2)(a)(iii), and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). He was sentenced to consecutive prison terms of seven to twenty years and two to four years for his respective convictions. Defendant appeals as of right, arguing that the trial court erred by denying his motion to suppress evidence and by denying his motion to strike a prosecution witness. We reverse.

On February 14, 2003, defendant's vehicle was searched pursuant to consent and a search warrant after he was stopped for traveling at an extensive rate of speed on northbound I-75 in Cheboygan County. During the search, the troopers discovered cocaine and marijuana in the trunk of the vehicle. Before trial, defendant moved to suppress the evidence, arguing that his detention following the traffic stop violated the Fourth Amendment of the United States Constitution and therefore resulted in an illegal seizure.

At the suppression hearing,[1] Michigan State Police Trooper Jason Varoni testified that he was positioned in the median on I-75 just south of M-68 when he observed an older blue Chevy four-door vehicle that appeared to be speeding. He activated the radar and clocked the vehicle at eighty-eight miles per hour. At approximately 4:20 p.m., the trooper pulled out and conducted a traffic stop of the vehicle, which contained three black occupants. Defendant, the driver of the vehicle, presented the necessary paperwork to the trooper and, in response to questioning by the trooper, indicated that he was going to Cheboygan to visit friends and that he was staying at the

[1] The parties stipulated to the use of the transcript of the preliminary examination for deciding the motion to suppress.

Holiday Inn. The trooper knew that there was not a Holiday Inn in Cheboygan and observed that there was no luggage in the passenger compartment that would indicate a stay. Before issuing a warning or a ticket, the trooper asked defendant to step out of the vehicle. Defendant identified his backseat passenger as his wife, Sherrie Williams, and his front seat passenger as Keithan King. In response to questioning, defendant stated that he was coming from Detroit and that he was going to be staying in Cheboygan for "about two days." Defendant also stated that he did not have any luggage in the vehicle, "other than the clothes he was wearing." Defendant also stated that he had been arrested previously "for marijuana." At that point, defendant was asked to return to his vehicle, and the trooper questioned King.

King indicated that he did not know where he was going and did not know how long he was going to be gone. King stated that he did not have any baggage or clothing with him for the trip. King returned to the vehicle and Trooper Varoni spoke with Sherrie Williams through the back window of the vehicle. Sherrie indicated that she was going to Cheboygan to go shopping and that they were going to stop and shop at strip malls on the way back to Detroit. She indicated that she did not know where they would be staying and that they did not have any reservations. The conversations took a total of approximately five to eight minutes.

Trooper Varoni then advised defendant of the different stories between the three occupants and asked defendant if he would consent to a search of the car. Defendant consented, and a canine unit arrived at the scene in approximately three minutes. The dog had a positive alert in the backseat where Sherrie Williams had been seated, in the area where the seat and the backrest come together.

After the dog alerted, Trooper Varoni asked defendant if he had a key to the trunk. Defendant answered that he did not carry a key and, ultimately, a search warrant was obtained at approximately 7:30 p.m. During the search of the trunk the troopers found a Best Western laundry bag behind a speaker box. The bag contained a large zip lock baggie containing suspected marijuana and a sandwich baggie contained suspected cocaine. Defendant was arrested on suspicion on possession with intent to deliver cocaine and marijuana.

Defendant moved to suppress the evidence, arguing that the search and seizure was predicated upon an illegal detention. He asserted that the trooper did not have a reasonable suspicion to detain defendant after the initial traffic stop was concluded or to ask defendant to step out of the vehicle. The trial court denied the motion, finding that:

> The statements concerning staying at the Holiday Inn coupled with the other statements of this Defendant and the other occupants of the car raised reasonable suspicion in the mind of the Trooper. The lack of luggage in the car soes [sic] not support any reasonable suspicion but in light of all the other facts this is not controlling. It could reasonably be concluded that there was a good possibility that these individuals were being dishonest with the Trooper. It could justify the Trooper's suspicion that some type of illegal action was occurring.

I

This Court's review of a lower court's factual findings in a suppression hearing is limited to clear error and those findings will be affirmed unless we are left with a definite and firm

conviction that a mistake was made. *People v Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). However, the lower court's ultimate ruling with regard to the motion to suppress is reviewed de novo because the application of constitutional standards regarding searches and seizures to undisputed facts is entitled to less deference. *People v Oliver*, 464 Mich 184, 191; 627 NW2d 297 (2001).

II

Both the United States and Michigan Constitutions guarantee the right against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. The state and federal constitutions do not forbid all searches and seizures, only unreasonable ones. *Harris v United States*, 331 US 145, 150; 67 S Ct 1098; 91 L Ed 1399 (1947); People *v Jordan*, 187 Mich App 582, 586; 468 NW2d 294 (1991).

Whenever a police officer restrains a person's freedom, the person has been seized for purposes of the Fourth Amendment. However, not all seizures must be based on probable cause. A limited exception to the requirement of probable cause involving seizure of a person is where the officer has a "reasonable, articulable suspicion" that the person has committed or is about to commit a crime. *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968). A reasonable, articulable suspicion of criminal activity will support a brief investigative seizure of the person. However, an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. *Florida v Royer*, 460 US 491, 500; 103 S Ct 1319; 75 L Ed 2d 229 (1983) (plurality opinion); *United States v Richardson*, 949 F 2d 851, 857 (CA 6, 1991).

There is no dispute that the initial traffic stop was lawful. Defendant argues that the purpose of the stop was effectuated when defendant supplied the necessary paperwork. He contends that the trooper unlawfully exceeded the initial stop when he asked defendant to step out of the vehicle because the trooper had "only a generalized hunch" that criminal activity was afoot. We agree.

A review of the record reveals that the trooper commenced an investigatory stop when he asked defendant to step out of his vehicle so that the trooper could question defendant about whether defendant "had bags in his truck or where they were at," whether "he had been in trouble before," and whether "he'd been arrested for anything to do with drugs." These questions had no relevance to the traffic stop and were asked in order to determine whether defendant was involved in criminal activity. At the time the investigatory stop commenced, the trooper was acting on the basis that defendant told the trooper that he was staying at a Holiday Inn "in Cheboygan" when the Holiday Inn closest to Cheboygan is apparently twenty miles north in Mackinaw City, and the trooper's observation that defendant and his passengers had no luggage in the passenger compartment of the vehicle. This information does not constitute reasonable suspicion of criminal activity. Although defendant's statement that he and his companions were staying at a Holiday Inn "in Cheboygan" could have been a lie, it is equally plausible that defendant simply misspoke. Regardless, whether the statement was a lie or not was unsubstantiated at the time the trooper commenced the investigatory stop, and it alone does not rise to the level of constituting a reasonable, articulable suspicion of criminal activity. Further, the trooper's observation that the passenger compartment contained no luggage is of no particular significance, and certainly is not suggestive of criminal activity. Rather, on these

facts, it is apparent that the trooper was acting on a "hunch," which is insufficient grounds for pursuing an investigatory stop. *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996).[2]

Reversed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra

[2] In light of our conclusion, we need not address defendant's argument that the trial court erred by denying defendant's motion to strike fingerprint analyst Thomas Holcomb because Holcomb was not identified by name on the witness list in violation of MCL 767.40a(4) and MCL 767.40a(3). We note, however, that defendant's argument is without merit.